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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re J.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

F056596

(Super. Ct. No. JJD061030)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Valeriano Saucedo, Judge.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Charles A. French, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Vartabedian, Acting P.J., Wiseman, J., and Levy, J.

The court found that appellant, J.C., was a person described in Welfare and Institutions Code, section 602, after it sustained allegations charging appellant with lewd and lascivious conduct with a child under the age of 14 (Pen. Code, § 288, subd. (a)).¹ On October 10, 2008, the court set appellant's maximum term of confinement at eight years with credit for 56 days served.

On appeal, appellant contends the evidence is insufficient to sustain the court's true finding. We will affirm.

FACTS

On August 7, 2006, S.W. baby-sat several children at her mother's house in Tipton including G., her two-year-old female cousin, and appellant, her stepbrother who was 12 years old at the time. S.W.'s aunt was also at the house.

At 3:15 p.m., S.W. answered the phone and spoke to her mother. S.W. was on the phone only a short time when she heard appellant call G. She then told her mother she had to go and hung up the telephone. S.W. walked down the hallway, looked in the restroom and appellant's room, but did not see him in there. She looked into her mother's room and saw appellant crouched down in the two-foot space between the bed and the entertainment center and G. leaning back on the edge of the bed. Appellant had his hand under G.'s skirt. As S.W. entered the room, appellant took his hand out from under the victim's panties and flung it backwards. S.W. heard the sound of elastic hitting G.'s skin and told appellant, "You f'ing touched her." S.W. hit appellant as he ran past her down the hallway and appellant said, "I didn't do it, I didn't do nothing." S.W. grabbed G. and five-year-old R., who had also been on the bed, and placed them behind her.

¹ All further statutory references are to the Penal Code.

Tulare County Sheriff's Detective Jason Kennedy interviewed appellant after the incident. Appellant told Kennedy that he placed his hand on the exterior of the victim's vagina and touched her "skin-to-skin" for approximately 10 seconds. He held his hand still. Detective Kennedy asked appellant why he put his hand up the victim's skirt and appellant replied that he did not know. When asked if he did it because he was curious, appellant said, "I guess." Appellant's five-year-old stepbrother, R. was in the room when the incident happened. Appellant did not say anything to R. or tell the victim to not say anything.

Appellant also admitted he touched the victim's vagina with his hand on a prior occasion that occurred between July 4, 2006, and August 7, 2006. That incident occurred in appellant's room and lasted approximately 30 seconds. During that incident, appellant did not say anything to the victim and she was fully clothed. Appellant also stated he felt stupid for doing what he did.

The defense did not present any evidence.

DISCUSSION

Appellant contends the evidence is insufficient to sustain the court's finding that he molested G. because it failed to show that he touched the victim's vagina with the intent to arouse himself or the victim. We disagree.

"When an appellant asserts there is insufficient evidence to support the judgment, our review is circumscribed. [Citation.] We review the whole record most favorably to the judgment to determine whether there is substantial evidence-that is, evidence that is reasonable, credible, and of solid value-from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. [Citations.] The trier of fact, not the appellate court, must be convinced of the defendant's guilt, and if the circumstances and reasonable inferences justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.] This standard of review applies with equal force to claims that the evidence does not support the

determination that a juvenile understood the wrongfulness of his conduct. [Citation.]" (*In re Jerry M.* (1997)59 Cal.App.4th 289, 298 (*Jerry M.*)).

"Violation of section 288, subdivision (a) requires the specific intent of arousing the sexual desires of either the perpetrator or the victim. [Citations.] Because the requisite specific intent is an element of the crime it must be proved beyond a reasonable doubt. [Citations.] [¶] ... [¶]

"Because intent can seldom be proved by direct evidence, it may be inferred from the circumstances. [Citations.] Circumstances which have been considered relevant to proving intent to satisfy sexual desires include: the charged act, extrajudicial statements, the relationship of the parties, other acts of lewd conduct, coercion or deceit used to obtain the victim's cooperation, attempts to avoid detection, offering of a reward for cooperation, a stealthy approach to the victim, admonishment of the victim not to disclose the occurrence, physical evidence of sexual arousal and clandestine meetings. [Citations.] To this list must be added, in our view, the age of the defendant.... [T]he younger the minor the less likely his acts are with the specific intent of sexual arousal. At some age younger than 14 years, which we need not determine in this case, the minor cannot as a matter of law have the specific intent of sexual arousal." (*Jerry M., supra*, 59 Cal.App.4th at pp. 299-300.)

Appellant was 12 years old when he assaulted the two-year-old victim clandestinely in a bedroom. Further, the juvenile court could reasonably find that appellant waited until his stepsister was occupied on the phone to lure the victim into the bedroom where the assault occurred. The court could also reasonably have found that appellant exhibited a consciousness of guilt when he reacted to S.W.'s entry into the bedroom by quickly removing his hand from under the victim's panties and when he falsely denied having done anything. Additionally, appellant admitted having recently committed a similar act on the victim that lasted 30 seconds and during neither incident did he attempt to view the victim's vaginal area as might be expected from a juvenile who was merely curious about the physical differences between males and females. These circumstances support the court's finding that appellant's conduct was motivated not by juvenile curiosity, but rather by the intent to arouse himself.

Appellant misplaces his reliance on *Jerry M.* to contend that the evidence fails to establish the requisite intent. In *Jerry M.* the 11-year-old minor approached a 12-year-old girl as she spoke with her friend and squeezed her breasts through her shirt. The following month, the minor borrowed a bicycle from the same girl and refused to return it until the girl acquiesced to showing him her breasts. The girl told a detective that the minor had also touched her breasts during this latter incident. The following month, the minor approached a 13-year-old girl, touched her breasts with his fingertips and said, “those grew” before she backed away. That same month, the minor approached a 12-year-old girl and asked her if she was “flat.” After the girl ignored the minor’s question, he put his hands under her T-shirt and bra and touched her breasts with his fingertips. (*Jerry M.*, *supra*, 59 Cal.App.4th at p. 294.)

In finding the evidence was insufficient to sustain the trial court’s finding that he had the requisite intent to arouse himself or the victim, the *Jerry M.* court stated,

“In reaching this conclusion we are persuaded by the following factors. Jerry was 11 years old and there is no evidence he had reached puberty. There is no evidence of sexual arousal. (Cf. *In re Paul C.* [(1990)] 221 Cal.App.3d [43,] at p. 54 [defendant 13 1/2 years old had an erection at time of offense].) Each of the minor victims knew Jerry; his conduct was in public, during daytime in the presence of others; and there was no attempt or opportunity to avoid detection. There was no clandestine activity preceding the touching, no stealthy approach or modus operandi and no admonishment to the victims not to disclose the occurrence. There was no attempt to prolong the touching beyond the initial momentary contact; there was no caressing. The record shows Jerry was a brazen 11-year-old whose conduct was more consistent with an intent to annoy and obtain attention than with sexual arousal. Under these circumstances Jerry was perhaps guilty of battery (§ 242), but the record does not support a true finding beyond a reasonable doubt of conduct intended sexually to exploit a child—the ‘gist’ of section 288, subdivision (a). [Citation.]” (*Jerry M.*, *supra*, 59 Cal.App.4th at p. 300.)

Jerry M. is inapposite because here there was evidence of clandestine conduct by appellant in waiting until his stepsister was occupied on the phone before calling the

victim and taking her to a bedroom. Further, unlike the juvenile in *Jerry M.*, appellant engaged in conduct that exhibited a consciousness of guilt. Additionally, the unlawful touching here was not momentary: the first incident lasted 30 seconds and the other one 10 seconds and would have lasted more if not for S.W. walking into the bedroom. Moreover, appellant was 12 years old when he assaulted the victim, approximately one year older than the juvenile in *Jerry M.* In *Jerry M.* the ages of the victims and the manner in which the juvenile assaulted them supported an inference that the appellant in that case acted with the intent to annoy the victims. In contrast, here there is no evidence which suggests an innocent motive for appellant's behavior, e.g., that he acted out of curiosity over the differences in male and female anatomy. Thus, we conclude that the evidence supports the juvenile court's finding that appellant violated section 288 subdivision (a).

DISPOSITION

The judgment is affirmed.